

MONTANA LEGISLATIVE HISTORY

Chapter 48 19 95

Bill H 98 S _____ Original bill & history X c

H. Committee on BUSINESS & LABOR

Hearing Date(s) 1/16 X c

Exec. ACTION 1/11 X c

_____ c

_____ c

Date Out _____ c

S. Committee on Labor & EMPLOYMENT

Hearing Date(s) 1/31 X c

Exec. ACTION _____ c

_____ c

_____ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

1/18 TAKEN FROM 3RD READING AND
REREFERRED TO FISH & GAME
1/31 HEARING
2/16 TABLED IN COMMITTEE
2/23 MISSED TRANSMITTAL DEADLINE
DIED IN COMMITTEE

HB 95 INTRODUCED BY OHS
REVISE CERTAIN PROVISIONS REGARDING THE SALE OF LIVESTOCK
BY REQUEST OF THE DEPARTMENT OF LIVESTOCK

1/05	INTRODUCED		
1/05	FIRST READING		
1/05	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
1/06	FISCAL NOTE REQUESTED		
1/09	FISCAL NOTE RECEIVED		
1/09	FISCAL NOTE PRINTED		
1/10	HEARING		
1/11	COMMITTEE REPORT—BILL PASSED	94	4
1/12	2ND READING PASSED	93	5
1/13	3RD READING PASSED		
TRANSMITTED TO SENATE			
1/16	FIRST READING		
1/16	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
1/20	HEARING		
1/21	COMMITTEE REPORT—BILL CONCURRED	48	1
1/24	2ND READING CONCURRED	49	1
1/25	3RD READING CONCURRED		
RETURNED TO HOUSE			
1/26	SIGNED BY SPEAKER		
1/26	SIGNED BY PRESIDENT		
1/26	TRANSMITTED TO GOVERNOR		
1/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 11		
	EFFECTIVE DATE: 10/01/95		

HB 96 INTRODUCED BY LARSON
EXEMPT VEHICLES OWNED BY SPECIAL DISTRICTS FROM VEHICLE
REGISTRATION FEES, THE WEED CONTROL FEE, AND THE NEW CAR
SALES TAX

1/05	INTRODUCED		
1/05	FIRST READING		
1/05	REFERRED TO TAXATION		
1/06	FISCAL NOTE REQUESTED		
1/11	HEARING		
1/11	FISCAL NOTE RECEIVED		
1/11	FISCAL NOTE PRINTED		
1/18	COMMITTEE REPORT—BILL PASSED AS AMENDED	93	5
1/21	2ND READING PASSED	91	5
1/23	3RD READING PASSED		
TRANSMITTED TO SENATE			
1/24	FIRST READING		
1/24	REFERRED TO TAXATION		
2/07	HEARING		
2/07	COMMITTEE REPORT—BILL CONCURRED	40	0
2/27	2ND READING CONCURRED	49	0
2/28	3RD READING CONCURRED		

3/02 RETURNED TO HOUSE
3/02 SIGNED BY SPEAKER
3/03 SIGNED BY PRESIDENT
3/07 TRANSMITTED TO GOVERNOR
SIGNED BY GOVERNOR
CHAPTER NUMBER 81
EFFECTIVE DATE: 03/06/95

HB 97 INTRODUCED BY MENAHAN, ET AL.
AUTHORIZE ISSUANCE OF PERSONALIZED VETERANS' LICENSE PLATES

1/05	INTRODUCED		
1/05	FIRST READING		
1/05	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/06	FISCAL NOTE REQUESTED		
1/11	HEARING		
1/11	FISCAL NOTE RECEIVED		
1/12	FISCAL NOTE PRINTED		
1/12	COMMITTEE REPORT—BILL PASSED		
1/13	2ND READING PASSED	97	0
1/16	3RD READING PASSED	98	0
TRANSMITTED TO SENATE			
1/17	FIRST READING		
1/17	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/28	HEARING		
3/01	COMMITTEE REPORT—BILL CONCURRED		
3/02	2ND READING CONCURRED	49	0
3/03	3RD READING CONCURRED	49	0
RETURNED TO HOUSE			
3/07	SIGNED BY SPEAKER		
3/09	SIGNED BY PRESIDENT		
3/09	TRANSMITTED TO GOVERNOR		
3/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 126		
	EFFECTIVE DATE: 10/01/95		

HB 98

INTRODUCED BY PAVLOVICH, ET AL.
REVISE STATE LABOR LAWS TO EXCLUDE FROM MINIMUM WAGE,
OVERTIME, UNEMPLOYMENT INSURANCE, AND WORKERS'
COMPENSATION REQUIREMENTS A DIRECT SELLER AS DEFINED BY
FEDERAL LAW

1/05	INTRODUCED		
1/05	FIRST READING		
1/05	REFERRED TO BUSINESS & LABOR		
1/06	FISCAL NOTE REQUESTED		
1/10	HEARING		
1/10	FISCAL NOTE RECEIVED		
1/10	FISCAL NOTE PRINTED		
1/11	COMMITTEE REPORT—BILL PASSED		
1/12	2ND READING PASSED	98	0
1/13	3RD READING PASSED	98	0
TRANSMITTED TO SENATE			
1/16	FIRST READING		
1/16	REFERRED TO BUSINESS & INDUSTRY		
1/18	REREFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/31	HEARING		
2/01	COMMITTEE REPORT—BILL CONCURRED		
2/02	2ND READING CONCURRED	42	6
2/03	3RD READING CONCURRED	45	5

2/07 RETURNED TO HOUSE
 2/07 SIGNED BY SPEAKER
 2/07 SIGNED BY PRESIDENT
 2/08 TRANSMITTED TO GOVERNOR
 2/09 SIGNED BY GOVERNOR
 CHAPTER NUMBER 48
 EFFECTIVE DATE: 02/09/95

HB 99 INTRODUCED BY FUCHS, ET AL.
 REVISE DEFINITION OF DISPLACED HOMEMAKER TO CONFORM TO
 DEFINITION IN THE CARL D. PERKINS VOCATIONAL AND APPLIED
 TECHNOLOGY EDUCATION ACT

1/06	INTRODUCED		
1/06	FIRST READING		
1/06	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/11	HEARING		
1/16	COMMITTEE REPORT—BILL PASSED	98	0
1/17	2ND READING PASSED	94	3
1/18	3RD READING PASSED		
	TRANSMITTED TO SENATE		
1/19	FIRST READING		
1/19	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/06	HEARING		
2/08	COMMITTEE REPORT—BILL CONCURRED AS AMENDED	40	0
2/27	2ND READING CONCURRED	49	0
2/28	3RD READING CONCURRED		
	RETURNED TO HOUSE WITH AMENDMENTS		
3/03	2ND READING AMENDMENTS CONCURRED	94	6
3/04	3RD READING AMENDMENTS CONCURRED	93	3
3/07	SIGNED BY SPEAKER		
3/09	SIGNED BY PRESIDENT		
3/09	TRANSMITTED TO GOVERNOR		
3/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 127		
	EFFECTIVE DATE: 03/13/95		

HB 100 INTRODUCED BY MCKEE
 REVISE CERTAIN LAWS RELATING TO UNEMPLOYMENT INSURANCE
 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

1/06	INTRODUCED		
1/06	FIRST READING		
1/06	REFERRED TO BUSINESS & LABOR		
1/07	FISCAL NOTE REQUESTED		
1/11	HEARING		
1/13	FISCAL NOTE RECEIVED		
1/13	FISCAL NOTE PRINTED		
2/01	COMMITTEE REPORT—BILL PASSED AS AMENDED	73	23
2/17	2ND READING PASSED AS AMENDED	79	20
2/20	3RD READING PASSED		
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/07	HEARING		
3/09	COMMITTEE REPORT—BILL CONCURRED	39	0
3/11	2ND READING CONCURRED	49	0
3/13	3RD READING CONCURRED		

3/15 RETURNED TO HOUSE
 3/18 SIGNED BY SPEAKER
 3/18 SIGNED BY PRESIDENT
 3/20 TRANSMITTED TO GOVERNOR
 3/23 SIGNED BY GOVERNOR
 CHAPTER NUMBER 195
 EFFECTIVE DATE: 01/01/96—SECTION 1
 EFFECTIVE DATE: 03/23/95—SECTIONS 2-10 & 12-21
 EFFECTIVE DATE: 10/01/95—SECTION 11

HB 101 INTRODUCED BY MASOLO
 IMPLEMENT RECOMMENDATION OF THE GOVERNOR'S TASK FORCE ON
 RENEWING GOVERNMENT TO ALLOW SELF-GOVERNING LOCAL
 GOVERNMENTS TO ESTABLISH ALTERNATIVE METHODS FOR
 CARRYING OUT FUNCTIONS AND PROVIDING SERVICES REQUIRED BY
 THE STATE

1/06	INTRODUCED		
1/06	FIRST READING		
1/06	REFERRED TO LOCAL GOVERNMENT		
1/10	HEARING		
2/09	COMMITTEE REPORT—BILL PASSED		
2/11	2ND READING PASSED	61	37
2/13	3RD READING PASSED	62	34
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO LOCAL GOVERNMENT		
3/14	HEARING		
3/24	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

HB 102 INTRODUCED BY ROSE
 PROVIDE THAT PAYMENT OF A UNIFORM ALLOWANCE TO OFFICERS OF
 THE MONTANA NATIONAL GUARD IS DISCRETIONARY
 BY REQUEST OF THE DEPARTMENT OF MILITARY AFFAIRS

1/06	INTRODUCED		
1/06	FIRST READING		
1/06	REFERRED TO STATE ADMINISTRATION		
1/07	FISCAL NOTE REQUESTED		
1/11	FISCAL NOTE RECEIVED		
1/11	FISCAL NOTE PRINTED		
1/12	HEARING		
1/12	COMMITTEE REPORT—BILL PASSED		
1/13	2ND READING PASSED	93	4
1/16	3RD READING PASSED	93	4
	TRANSMITTED TO SENATE		
1/17	FIRST READING		
1/17	REFERRED TO STATE ADMINISTRATION		
1/23	HEARING		
1/24	COMMITTEE REPORT—BILL CONCURRED		
1/26	2ND READING CONCURRED	48	0
1/27	3RD READING CONCURRED	49	0

RETURNED TO HOUSE
 SIGNED BY SPEAKER
 SIGNED BY PRESIDENT
 TRANSMITTED TO GOVERNOR
 SIGNED BY GOVERNOR
 CHAPTER NUMBER 20
 EFFECTIVE DATE: 10/01/95

1
2 INTRODUCED BY Carlson ~~House~~ BILL NO. 98
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING STATE LABOR LAWS TO EXCLUDE FROM MINIMUM
5 WAGE, OVERTIME, UNEMPLOYMENT INSURANCE, AND WORKERS' COMPENSATION REQUIREMENTS
6 A DIRECT SELLER AS DEFINED BY FEDERAL LAW; AMENDING SECTIONS 39-3-406, 39-51-204, AND
7 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10

11 **Section 1.** Section 39-3-406, MCA, is amended to read:

12 **"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect
13 to:

14 (a) students participating in a distributive education program established under the auspices of an
15 accredited educational agency;

16 (b) persons employed in private homes whose duties consist of menial chores, such as babysitting,
17 mowing lawns, and cleaning sidewalks;

18 (c) persons employed directly by the head of a household to care for children dependent upon the
19 head of the household;

20 (d) immediate members of the family of an employer or persons dependent upon an employer for
21 half or more of their support in the customary sense of being a dependent;

22 (e) any persons not regular employees of a nonprofit organization who voluntarily offer their
23 services to a nonprofit organization on a fully or partially reimbursed basis;

24 (f) handicapped workers engaged in work that is incidental to training or evaluation programs or
25 whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

26 (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed
27 30 days of their employment;

28 (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion
29 may not exceed 180 days from their initial date of employment and further provided that during this
30 exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established

1 in this part;

2 (i) retired or semiretired persons performing part-time incidental work as a condition of their
3 residence on a farm or ranch;

4 (j) any individual employed in a bona fide executive, administrative, or professional capacity as
5 these terms are defined by regulations of the commissioner;

6 (k) any individual employed by the United States of America;

7 (l) resident managers employed in lodging establishments or personal care facilities who, under the
8 terms of their employment, live in the establishment or facility;

9 (m) an outside salesperson or marketing representative paid on a commission, contract, or salary
10 basis who is primarily employed in selling or marketing products or services in the food distribution industry
11 for a food broker, wholesaler, or association;

12 (n) a direct seller as defined in 26 U.S.C. 3508.

13 (2) The provisions of 39-3-405 do not apply to:

14 (a) an employee with respect to whom the United States ~~Secretary~~ secretary of Transportation
15 transportation has power to establish qualifications and maximum hours of service pursuant to the
16 provisions of 49 U.S.C. 304;

17 (b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

18 (c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or
19 natural state;

20 (d) an outside salesperson paid on a commission or contract basis who is primarily employed in
21 selling advertising for a newspaper;

22 (e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily
23 engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements
24 if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily
25 engaged in the business of selling the vehicles or implements to ultimate purchasers;

26 (f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is
27 employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats,
28 or aircraft to ultimate purchasers;

29 (g) an outside salesperson paid on a commission or contract basis who is primarily employed in
30 selling office supplies, computers, or other office equipment for an office equipment dealer;

1 (h) a salesperson paid on a commission or contract basis who is primarily engaged in selling
2 advertising for a radio or television station employer;

3 (i) an employee employed as a driver or driver's helper making local deliveries who is compensated
4 for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that
5 the plan has the general purpose and effect of reducing hours worked by the employees to or below the
6 maximum workweek applicable to them under 39-3-405;

7 (j) an employee employed in agriculture or in connection with the operation or maintenance of
8 ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop
9 basis and that are used exclusively for supply and storing of water for agricultural purposes;

10 (k) an employee employed in agriculture by a farmer, notwithstanding other employment of the
11 employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to
12 the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

13 (i) primarily employed during a workweek in agriculture by a farmer; and

14 (ii) paid for employment in connection with the livestock auction operations at a wage rate not less
15 than that prescribed by 39-3-404;

16 (l) an employee of an establishment commonly recognized as a country elevator, including an
17 establishment that sells products and services used in the operation of a farm, if no more than five
18 employees are employed by the establishment;

19 (m) a driver employed by an employer engaged in the business of operating taxicabs;

20 (n) an employee who is employed with the employee's spouse by a nonprofit educational institution
21 to serve as the parents of children who are orphans or one of whose natural parents is deceased or who
22 are enrolled in the institution and reside in residential facilities of the institution so long as the children are
23 in residence at the institution and so long as the employee and the employee's spouse reside in the facilities
24 and receive, without cost, board and lodging from the institution and are together compensated, on a cash
25 basis, at an annual rate of not less than \$10,000;

26 (o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or
27 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation
28 terminal if the number of employees employed by the employer in the forestry or lumbering operations does
29 not exceed eight;

30 (p) an employee of a sheriff's department who is working under an established work period in lieu

1 of a workweek pursuant to 7-4-2509(1);

2 (q) an employee of a municipal or county government who is working under a work period not
3 exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a
4 collective bargaining unit represents the employee or by mutual agreement of the employer and employee
5 when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work
6 period must be compensated at a rate of not less than 1 ½ times the hourly wage rate for the employee.

7 (r) an employee of a hospital or other establishment primarily engaged in the care of the sick,
8 disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in
9 a 14-day period established through either a collective bargaining agreement when a collective bargaining
10 unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit
11 is not recognized. Employment in excess of 8 hours ~~per~~ a day or 80 hours in a 14-day period must be
12 compensated for at a rate of not less than 1 ½ times the hourly wage rate for the employee.

13 (s) a firefighter who is working under a work period established in a collective bargaining agreement
14 entered into between a public employer and a firefighters' organization or its exclusive representative;

15 (t) an officer or other employee of a police department in a city of the first or second class who
16 is working under a work period established by the chief of police under 7-32-4118;

17 (u) an employee of a department of public safety working under a work period established pursuant
18 to 7-32-115;

19 (v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 ½ times
20 the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more
21 than half of the employee's compensation for a period of not less than 1 month is derived from
22 commissions on goods and services."

23
24 **Section 2.** Section 39-51-204, MCA, is amended to read:

25 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not
26 include:

27 (a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to
28 this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded
29 from coverage under this chapter if the employer:

30 (i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the

monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(b) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(ii) keeps separate books and records to account for the employment of persons in domestic service.

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law may not be entitled to exemption under this subsection and are subject to this chapter the same as state banks, provided that the service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department shall enter into agreements with the proper agencies under an act of congress, which agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(g) services performed as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used

1 in this subsection:

2 (i) "free-lance correspondent" is a person who submits articles or photographs for publication and
3 is paid by the article or by the photograph; and

4 (ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering
5 newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally
6 to the employee's main duties, carries or delivers papers.

7 (h) services performed by real estate, securities, and insurance salespeople paid solely by
8 commissions and without guarantee of minimum earnings;

9 (i) service performed in the employ of a school, college, or university if the service is performed
10 by a student who is enrolled and is regularly attending classes at a school, college, or university or by the
11 spouse of a student if the spouse is advised, at the time that the spouse commences to perform the
12 service, that the employment of the spouse to perform the service is provided under a program to provide
13 financial assistance to the student by the school, college, or university and that the employment will not
14 be covered by any program of unemployment insurance;

15 (j) service performed by an individual who is enrolled at a nonprofit or public educational institution,
16 which normally maintains a regular faculty and curriculum and normally has a regularly organized body of
17 students in attendance at the place where its educational activities are carried on, as a student in a full-time
18 program taken for credit at an institution that combines academic instruction with work experience if the
19 service is an integral part of the program and the institution has certified that fact to the employer, except
20 that this subsection does not apply to service performed in a program established for or on behalf of an
21 employer or group of employers;

22 (k) service performed in the employ of a hospital if the service is performed by a patient of the
23 hospital;

24 (l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber
25 who is licensed under Title 37, chapter 30, and:

26 (i) who has acknowledged in writing that the cosmetologist or barber is not covered by
27 unemployment insurance and workers' compensation;

28 (ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined
29 in 37-30-101, which contract must show that the cosmetologist or barber:

30 (A) is free from all control and direction of the owner in the contract;

(B) receives payment for services from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection);

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(n) employment of sole proprietors or working members of a partnership;

(o) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(p) employment of a direct seller as defined in 26 U.S.C. 3508.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by ~~a duly~~ an ordained, commissioned, or licensed minister of a church in the exercise of the

1 church's ministry or by a member of a religious order in the exercise of duties required by the order;

2 (c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals
3 whose earning capacity is impaired by age or physical or mental deficiency or injury or providing
4 remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily
5 absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;

6 (d) as part of an unemployment work-relief or work-training program assisted or financed in whole
7 or in part by a federal agency or any agency of a state or political subdivision of the state by an individual
8 receiving work relief or work training; or

9 (e) for a state prison or other state correctional or custodial institution by an inmate of that
10 institution.

11 (4) An individual found to be an independent contractor by the department under the terms of
12 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent
13 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
14 39-51-2402.

15 (5) This section does not apply to a state or local governmental entity or a nonprofit organization
16 defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from
17 employment as defined in the Federal Unemployment Tax Act."

18
19 **Section 3.** Section 39-71-401, MCA, is amended to read:

20 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
21 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
22 all employees, as defined in 39-71-118. An employer who has any employee in service under any
23 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
24 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
25 Compensation Act is subject to and bound by the compensation plan that has been elected by the
26 employer.

27 (2) Unless the employer elects coverage for these employments under this chapter and an insurer
28 allows ~~such~~ an election, the Workers' Compensation Act does not apply to any of the following
29 employments:

30 (a) household and domestic employment;

1 (b) casual employment as defined in 39-71-116;

2 (c) employment of a dependent member of an employer's family for whom an exemption may be
3 claimed by the employer under the federal Internal Revenue Code;

4 (d) employment of sole proprietors or working members of a partnership, except as provided in
5 subsection (3);

6 (e) employment of a broker or salesman performing under a license issued by the board of realty
7 regulation;

8 (f) employment of a direct seller ~~engaged in the sale of consumer products, primarily in the~~
9 ~~customer's home~~ as defined in 26 U.S.C. 3508;

10 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
11 under the laws of the United States;

12 (h) employment of any person performing services in return for aid or sustenance only, except
13 employment of a volunteer under 67-2-105;

14 (i) employment with any railroad engaged in interstate commerce, except that railroad construction
15 work is included in and subject to the provisions of this chapter;

16 (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic
17 event, unless the person is otherwise employed by a school district;

18 (k) any person performing services as a newspaper carrier or free-lance correspondent if the person
19 performing the services or a parent or guardian of the person performing the services in the case of a minor
20 has acknowledged in writing that the person performing the services and the services are not covered. As
21 used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for
22 publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

23 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
24 bundles; but

25 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,
26 carries or delivers papers.

27 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

28 (m) a person who is employed by an enrolled tribal member who operates solely within the exterior
29 boundaries of an Indian reservation.

30 (3) (a) A sole proprietor or a working member of a partnership who represents to the public that

1 the person is an independent contractor shall elect to be bound personally and individually by the provisions
2 of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers'
3 Compensation Act.

4 (b) The application must be made in accordance with the rules adopted by the department. The
5 department may deny the application only if it determines that the applicant is not an independent
6 contractor.

7 (c) When an application is approved by the department, it is conclusive as to the status of an
8 independent contractor and precludes the applicant from obtaining benefits under this chapter.

9 (d) When an election of an exemption is approved by the department, the election remains effective
10 and the independent contractor retains the status as an independent contractor until the independent
11 contractor notifies the department of any change in status and provides a description of present work
12 status.

13 (e) If the department denies the application for exemption, the applicant may contest the denial by
14 petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An
15 applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with
16 the procedure established in 39-51-2403 and 39-51-2404.

17 (4) (a) A private corporation shall provide coverage for its officers and other employees under the
18 provisions of compensation plan No. 1, 2, or 3. However, pursuant to rules that the department
19 promulgates and subject in all cases to approval by the department, an officer of a private corporation may
20 elect not to be bound as an employee under this chapter by giving a written notice, on a form provided by
21 the department, served in the following manner:

22 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
23 delivering the notice to the board of directors of the employer and to the department; or

24 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
25 delivering the notice to the board of directors of the employer, to the department, and to the insurer.

26 (b) If the employer changes plans or insurers, the officer's previous election is not effective and
27 the officer shall again serve notice as provided if the officer elects not to be bound.

28 (c) The appointment or election of an employee as an officer of a corporation for the purpose of
29 excluding the employee from coverage under this chapter does not entitle the officer to elect not to be
30 bound as an employee under this chapter. In any case, the officer shall sign the notice required by

1 subsection (4)(a) under oath or affirmation and is subject to the penalties for false swearing under 45-7-202
2 if the officer falsifies the notice.

3 (5) Each employer shall post a sign in the workplace at the locations where notices to employees
4 are normally posted, informing employees about the employer's current provision of compensation
5 insurance. A workplace is any location where an employee performs any work-related act in the course
6 of employment, regardless of whether the location is temporary or permanent, and includes the place of
7 business or property of a third person while the employer has access to or control over the place of
8 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
9 The sign must be provided by the department, distributed through insurers or directly by the department,
10 and posted by employers in accordance with rules adopted by the department. An employer who purposely
11 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."
12

13 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

14 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0098, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising state labor laws to exclude from minimum wage, overtime, unemployment insurance, and workers' compensation requirements a direct seller as defined by federal law.

ASSUMPTIONS:

Department of Labor and Industry

1. The Department of Labor and Industry does not keep data on this specific employment category, but it is assumed that the number of direct sellers in this category is minimal.

State Fund

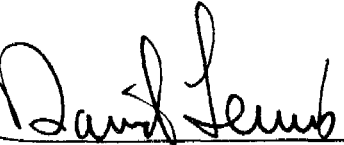
2. Direct sellers are currently exempt from workers' compensation laws.
3. Direct sellers will continue to be exempt from workers' compensation laws.
4. Sellers working from a shop or showroom to arrange in-home demonstrations are covered under workers' compensation laws.

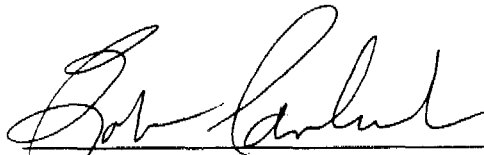
FISCAL IMPACT:

No fiscal impact.

TECHNICAL NOTE:

The bill would exclude "direct sellers", as defined by federal law (26 U.S.C. 3508) from the definition of "employment" (39-51-204, MCA) relative to coverage under unemployment insurance laws and, in effect, exempt this employment category from unemployment insurance requirements. With this exclusion, employers that use "direct sellers" would not report wages or pay the related UI tax for this group of employees (a reduction in income to the UI Trust Fund). Wages received by "direct sellers" would not be included in the employee's wage history which might at a future time be used to calculate a UI benefit payment (a potential reduction in future benefits paid from the UI Trust Fund). Those individuals (direct sellers) for whom wages are reported under current law, would receive a reduced benefit or no benefit under the proposed law since their wages would not be reported.

 1-10-95
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


BOB PAVLOVICH, PRIMARY SPONSOR DATE

Fiscal Note for HB0098, as introduced

HB 98

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE T. SIMON, on January 10, 1995,
at 8:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 34, HB 39, HB 98
Executive Action: *n/a*

HEARING ON HB 34

Opening Statement by Sponsor:

REP. DAN HARRINGTON, HD 38, Silver Bow County said this bill was
a law until 1985. The federal government decided that it was
time to change the law. The federal government has since changed

REP. OHS asked what the neighboring states rates were. Mr. Owen indicated he did not know.

CHAIRMAN SIMON said that if this bill passes as it is written and according to the news casts, a proposal was made to raise the federal minimum wage \$1.00. What happens to Montana workers under your bill, if this passes? REP. HARRINGTON said the bill had been amended again and did not feel sure that the \$1.00 would pass on the federal level. There would be two minimum wage levels in the state.

CHAIRMAN SIMON then said in the way this bill was drafted the language is being stricken that ties in with the federal minimum wage so if in fact later on there is a federal minimum wage that exceeds the amounts that are listed in this bill, now the Montana workers have fallen behind and the federal minimum wage would call for rather than being tied to the federal minimum wage. This would put the Montana workers at a level higher than what is called for in this bill. REP. HARRINGTON said the law would need to be changed by a certain percentage.

REP. PAVLOVICH also questioned the minimum wage in other states of which there was no answer.

TAPE 1, SIDE B

Closing by Sponsor:

Sponsor closes.

HEARING ON HB 98

Opening Statement by Sponsor:

REP. PAVLOVICH, HD 37, Silver Bow County said this bill exempts direct sellers from minimum wage, overtime, unemployment insurance and workers' compensation requirements in Montana.

Proponents' Testimony:

Dave Brown, Kirby Rocky Mountain Division distributed a copy of the codes regarding direct sellers. EXHIBIT 9

Eric Ellman, Associate Counsel and Manager of Government Relations, Direct Selling Association, Washington D.C. said there are 5.1 million direct sellers nationwide. There are 10,000-20,000 direct sellers in Montana. Direct sellers are independent business people. They work on commissions. They set their own hours and decide who to sell to and when to sell. Twenty-eight states exempt direct sellers from their unemployment and workers' compensation laws.

Brad Griffin, Montana Retail Association said this bill would move the state into the direct selling industry by codifying the status of direct sellers as non-employees under the unemployment compensation direct wage laws.

Van Gemmill, Kirby said he represented 12 states and gave a brief synopsis of the business.

Richard Herthneck, Attorney, Bernie and Herthneck, Cleveland, OH said he had represented Kirby and direct sellers for the past 18 years.

Mike Davis, Kirby supports this bill.

Blain Schaff, Kirby said he supported this bill.

David Roth, Attorney, Kirby or Montana supports this bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. LARSON wanted to explore the definition of agent and direct seller as independent operating agents. **Mr. Andrew** said that anytime the Department of Labor and Industry has a relationship between the parties the primary thing to consider is the element of control, the nature of the business and the nature of the product and the department does not oppose this bill.

REP. COCCHIARELLA questioned the number of direct sellers in Montana and **Dennis Zieler, Employment Relations, Department of Labor** said there was not a survey to obtain this data.

CHAIRMAN SIMON questioned outside sellers and in this case there is reference to direct seller - are these the same people? **Mr. Brown** said yes. There is still not a definition of direct sellers in the code. That is why that portion of the bill was amended to contain this definition. **CHAIRMAN SIMON** then asked if there was anyone else who could respond to this. **Mr. Ellman** said the definition of a direct seller is very specific and very narrow and very limited. To be a direct seller, under the federal law and the laws of 28 other states, one must sell on a commission or similar basis, sell at other than a permanent retail establishment such as a door to door and the contract which is entered into must reflect the reality of the situation that a person is a non employee and a self employed individual responsible for his own business operations.

Closing by Sponsor:

Sponsor closes.

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 1-10-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

26 U.S.C. 3508

Subtitle E—Employment Taxes

PART I—IN GENERAL

SEC. 243. TREATMENT OF REAL ESTATE AGENTS AND DIRECT SELLERS

(a) *GENERAL RULE.*—Chapter 25 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new section:

"SEC. 3508. TREATMENT OF REAL ESTATE AGENTS AND DIRECT SELLERS

"(a) *GENERAL RULE.*—For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller—

"(1) the individual performing such services shall not be treated as an employee, and

"(2) the person for whom such services are performed shall not be treated as an employer.

"(b) *DEFINITIONS.*—For purposes of this section—

"(1) *QUALIFIED REAL ESTATE AGENT.*—The term 'qualified real estate agent' means any individual who is a sales person if—

"(A) such individual is a licensed real estate agent,

"(B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

"(C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.

"(2) *DIRECT SELLER.*—The term 'direct seller' means any person if—

"(A) such person—

"(i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other persons) in

the home or otherwise than in a permanent retail establishment, or

"(ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment.

"(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

"(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

"(3) COORDINATION WITH RETIREMENT PLANS FOR SELF-EMPLOYED.—This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals)."

(b) AMENDMENT OF SOCIAL SECURITY ACT.—Section 210 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"Treatment of Real Estate Agents and Direct Sellers

"(p) Notwithstanding any other provision of this title, the rules of section 3508 of the Internal Revenue Code of 1954 shall apply for purposes of this title."

(c) INDEFINITE EXTENSION OF PROVISIONS RELATING TO EMPLOYMENT STATUS FOR EMPLOYMENT TAXES.—

(1) TERMINATION OF CERTAIN EMPLOYMENT TAX LIABILITY.—

(A) Subparagraph (A) of section 530(a)(1) of the Revenue Act of 1978 (relating to termination of certain employment tax liability for periods before July 1, 1982) is amended by striking out "ending before July 1, 1982".

(B) Paragraph (3) of section 530(a) of such Act is amended by striking out "and before July 1, 1982".

(C) The subsection heading of subsection (a) of section 530 of such Act is amended by striking out "FOR PERIODS BEFORE JULY 1, 1982".

(2) PROHIBITION AGAINST REGULATIONS AND RULINGS ON EMPLOYMENT STATUS.—Subsection (b) of section 530 of such Act is amended—

(A) by striking out "July 1, 1982 (or, if earlier, ", and

(B) by striking out "taxes" and inserting in lieu thereof "taxes".

(3) CERTAIN REGULATIONS, ETC., PERMITTED.—Nothing in section 530 of the Revenue Act of 1978 shall be construed to prohibit the implementation of the amendments made by this section.

(d) CLERICAL AMENDMENT.—The table of sections for chapter 25 of such Code is amended by adding at the end thereof the following new item:

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to services performed after December 31, 1982.

(2) SUBSECTION (c).—The amendments made by subsection (c) shall take effect on July 1, 1982.

EXHIBIT

9

DATE

1-10-95

HB 98

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor

SUB-COMMITTEE

DATE 1-10-95

BILL NO. HB 98

SPONSOR(S)

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Richard HERTHNECK	KIRBY		
Brad Griffin	MT Retail	✓	
JOE THARES	SELF		
Eric Elman	Direct Selling Assn.	✓	
BLAIN SCHAFF	KIRBY of Western MT	✓	
DAVE BROWN	Kirby	✓	
DAVID ROTT MSCA	KIRBY	✓	
Richard HERTHNECK	KIRBY	✓	
VAN Gemmill	Kirby	✓	
Mike Davis	Kirby	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:vissbcom.man

CS-14

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE T. SIMON, on January 11, 1995,
at 8:00 AM

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 100
Executive Action: HB 30, HB 33, HB 34, HB 39, HB 53, HB 98

HEARING ON HB 100

Opening Statement by Sponsor:

REP. JEANETTE MCKEE, HD 60, Ravalli Co. said this bill was being
carried on behalf of the Unemployment Insurance Division. This
is a housekeeping bill because it contains a variety of changes

REP. BARNETT said he opposed the bill because with price support and minimum wage that becomes the top. He favored eliminating minimum wage and go on the competitive market.

Motion/Vote: REP. HERRON MOVED TO TABLE HB 39. A roll call vote was taken which passed with all voting yes except REPS. SIMON, PAVLOVICH, COCCHIARELLA, ELLINGSON, EWER, KEENAN and TUSS voting no.

EXECUTIVE ACTION ON HB 53

Discussion:

CHAIRMAN SIMON stated there was another bill that will be making its way through the system addressing some of the concerns of the out-of-state pharmacists. They have worked out an arrangement with the in-state pharmacists. For the purposes of disposing with this bill the committee can resurrect it.

Motion/Vote: REP. COCCHIARELLA MOVED TO TABLE HB 53. A vote was taken which passed unanimously.

EXECUTIVE ACTION ON HB 98

Motion: REP. PAVLOVICH MOVED DO PASS ON HB 98.

Vote: A vote was taken on HB 98 which passed unanimously.

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 1-11-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		X
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		



HOUSE STANDING COMMITTEE REPORT

January 11, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 98** (first reading copy -- white) do pass.

Signed: _____

Bruce Simon
Bruce Simon, Chair

Committee Vote:
Yes 18, No 0.

091037SC.Hbk

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on January 31, 1995, at 1:00 P.M.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 155
HB 98
SB 110
Executive Action: SB 151
SB 155
SB 80
HB 98

{Tape: One; Side: One}

HEARING ON SB 155

Opening Statement by Sponsor:

SENATOR CHUCK SWYSGOOD, SD 1, Dillon, MT, expressed gratitude to the Labor and Employment Relations Committee for the flexibility in rescheduling SB 155. Senate Bill 155 would exempt a motor carrier vehicle lessor, who is an independent contractor, from the requirements of Unemployment Insurance and Worker's Compensation Laws. **SENATOR SWYSGOOD** requested the committee to table SB 155.

HEARING ON HB 98Opening Statement by Sponsor:

REPRESENTATIVE BOB PAVLOVICH, HD 37, Butte, MT, stated the intent of HB 98 is to revise state labor laws to exclude from minimum wage, overtime, unemployment insurance, and Workers' Compensation requirements for a direct seller as defined by federal law.

Proponents' Testimony:

Dave Brown, Butte, Montana pointed out proposed changes. **Mr. Brown** distributed a document, 26, USC 3508, which gave the federal definition of "direct seller". The definition is: "Such a person is engaged in the trade or business of selling (or soliciting the sale of consumer products to any buyer on a buy-sell basis, and deposit-commission basis, or any similar basis which the Secretary describes by regulations for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment, or is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise, than in a permanent retail establishment" After review of the changes in the law, **Mr. Brown** deemed it necessary to enter the definition into the record. **Mr. Brown** stated last session's (1993) Workers Comp bill, sponsored by **REP. DRISCOLL** exempted direct sellers from workers compensation; consequently, it is important that the law be equalized (**EXHIBIT 1**).

Eric J. Ellman, Associate Attorney and Public Relations Manager of Direct Selling Association, 1666 K. Street, NW, Suite 1010, Washington DC, stated a direct selling representative sells for companies like Kirby, Avon, Mary Kay, Amway, Tupperware and the Encyclopedia Britannica. **Mr. Ellman** handed out letters of support from direct selling companies (**EXHIBIT 2**). **Ellman** stated there are 5.5 million direct sellers nationwide and an estimated 10 to 20 thousand direct sellers in Montana. Direct sellers are independent business people, who invest in their own business, suffer profits and losses, and set their own hours and territory. Direct sellers decide what products to sell, when to sell them, and set their own prices. Direct sellers are exempt from worker compensation laws in every state. Montana law questions the interpretation of exempt and non-exempt people. Senate Bill 98 clarifies the fact that direct sellers are exempt.

Richard Herthneck, Burney & Herthneck Co., LPA. Attorneys and Counselors at Law, 160 Plaza West Building, Rocky River, Ohio 44116, stated for the last 18 years he has represented independent distributors and dealers throughout the United States. **Mr. Herthneck** explained Kirby cleaning systems are manufactured in Ohio and Texas, and the systems are sold at wholesale to independent distributors. The distributors are independent business people. The price of the systems are determined by the distributors and not by the manufacturers. The

dealer's profit is the difference between what he/she buys the system for at wholesale and the price the buyer is willing to pay. Kirbys have been sold in this manner since the 1930's. Dealers are truly independent business people, who have their own place of business. These people are required to complete reports, etc. Kirby dealers are successful business people. **Mr. Herthneck** submitted written testimony and urged the committee to support HB 98 (EXHIBIT 3).

Brad Griffens, Montana Retail Association, stated support of HB 98. Independent sellers are exempt from workers compensation. The amendment codifies the exemption of independent sellers. **Mr. Griffens** asked support for HB 98.

David Rott, Attorney, Missoula, MT, offered support for HB 98.

Mike Davis, Kirby Distributor, Helena, MT, offered support for HB 98.

Blaine Schaff, Missoula, MT, offered support for HB 98.

Bob Gustafson, Kirby Distributor, Billings, MT, offered support for HB 98.

Dan Fouts, Kirby Distributor, Butte, MT, offered support for HB 98.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR FRED VAN VALKENBURG asked **Chuck Hunter, Department of Labor and Industry**, how does the department deal with the issue of direct sellers, such as Kirby distributors. **Mr. Hunter** replied that currently direct sales personal are excluded from the Workers' Compensation Act. In other areas, such as unemployment insurance and wage/hour issues, each case is looked at individually to see what the wages were and if there have been any violations. **SENATOR VAN VALKENBURG** asked if there have been any violations concerning the wage/hour issue. **Mr. Hunter** replied that there have been no issues before the Labor and Industry Department.

SENATOR BAER asked if the department has opposition to the federal definition of the direct seller, as opposed to having an independent and a different Montana definition. **Mr. Hunter** stated the department sees value in having the definition entered into the record. The idea of consistency could prove to be a benefit. **SENATOR VAN VALKENBURG** said testimonial support had been given in earlier testimony from such companies as Amway, Shaklee, Mary Kay Cosmetics and from the direct selling association representative. **SENATOR VAN VALKENBURG** asked if any of the

proponents in the audience could think the bill would do something other than what the department's interpretation of what the bill would do. **Mr. Hunter** stated the companies that testified had been operating in Montana for a long period of time, and had been doing business in the same way. The department was comfortable with the language.

SENATOR BARTLETT asked **Mr. Fouts** if the job he has now would be affected by the bill. **Mr. Fouts** said no. **SENATOR BARTLETT** asked the general audience if any individual, direct seller would be affected by the proposed legislation. No audience member responded.

CHAIRMAN KEATING asked **REP. PAVLOVICH** what was the reason for the "passage on approval" date. **Mr. Brown** answered for **REP. PAVLOVICH**. He stated the passage and approval date had been chosen by the department because the department actively works on such issues. The effective date should stay the passage and approval date.

REPRESENTATIVE PAVLOVICH closed the hearing on HB 98. **REPRESENTATIVE PAVLOVICH** stated organized labor did not oppose HB 98 in the House of Representatives. **SENATOR BECK** would carry the bill.

CHAIRMAN KEATING turned over the gavel to **VICE-CHAIRMAN GARY AKLESTAD** in order to sponsor SB 110.

HEARING ON SB 110

Opening Statement by Sponsor:

SENATOR TOM KEATING, SD 5, Billings, stated SB 110 is a statute repealer, dealing with the Uninsured Employer's Provision of the Workers Compensation Act and the Underinsured Employer Fund of the Department of Labor. **SENATOR KEATING** stated in the past couple years he visited independent workers and small business employers in Billings, and elsewhere. Comments from people focused attention to the Workers' Comp requirements and how violators can avoid liability for not having the necessary Workers Compensation insurance. **SENATOR KEATING** described a could-be situation. An independent contractor is asked how many employees he has. The contractor says he doesn't hire employees, he works independent contractors because he can't compete with guys that go bare. Sometimes, out of state contractors come to work, but do not buy Workers' Comp insurance. If an employee gets hurt, the contractor can sue for liability. If uninsured contractors are sued, they go to the Department of Labor, and the claims are satisfied and benefits are paid.

SENATOR KEATING asked what happens if the employer does not have Workers' Comp insurance. The employer pays double premiums and pays the claim. Although, the Montana Constitution says the employer is exempt from liability if he/she provides Workers

SENATOR BARTLETT asked if SB 80 will exempt the positions covered by the amendment from overtime requirements. **SENATOR BENEDICT** explained SB 80 would bring these people into compliance with national, small market exemptions. The bill would only be applied to the small markets of less than 10,000. **SENATOR KEATING** stated SB 80 would exempt those people from time and a half, after 40 hour work week. **SENATOR BARTLETT** asked if there are radio stations for those outside the incorporated cities or towns. **SENATOR BENEDICT** stated every radio station has to be licensed to a city or town. There are no radio stations in unincorporated towns

Vote:

THE MOTION TO AMEND SB 80 PASSED, WITH SENATOR WILSON VOTING NO.

Motion:

SENATOR BENEDICT MOVED SB 80 DO PASS AS AMENDED.

Discussion:

SENATOR WILSON asked **SENATOR BENEDICT** if the amendments are stripped and the bill is returned to the Senate, will you reject the House amendments. **SENATOR BENEDICT** stated he would support the Senate amendment.

Vote:

THE DO PASS MOTION FOR SB 145 AS AMENDED PASSED, WITH SENATORS BARTLETT, VAN VALKENBURG, AND WILSON VOTING NO.

EXECUTIVE ACTION ON HB 98

Motion/Vote:

SENATOR BENEDICT MOVED HB 98 BE CONCURRED IN. THE MOTION CARRIED, WITH SENATOR BARTLETT VOTING NO.

SENATOR EMERSON stated he had the Department Head inform him, after he fired a person for just cause, he would have to pay unemployment benefits, otherwise the fired employee would have to go on welfare. **SENATOR EMERSON** stated to her that unemployment is not a welfare bill. **SENATOR EMERSON** was told by **SENATOR KEATING** that particular areas of concern can be brought before the committee. If the committee is convinced that there is a cause to create a committee bill, the concern can be remedied.

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE JAN 31, 1995

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SEN:1995
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CS-09

#1

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1 1 of 3
DATE 1-31-95
BILL NO. HB 98

26 U.S.C. 3508

Subtitle E—Employment Taxes

PART I—IN GENERAL

SEC. 269. TREATMENT OF REAL ESTATE AGENTS AND DIRECT SELLERS

(a) **GENERAL RULE.**—Chapter 25 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new section:

"SEC. 3508. TREATMENT OF REAL ESTATE AGENTS AND DIRECT SELLERS

"(a) **GENERAL RULE.**—For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller—

"(1) the individual performing such services shall not be treated as an employee, and

"(2) the person for whom such services are performed shall not be treated as an employer.

"(b) **DEFINITIONS.**—For purposes of this section—

"(1) **QUALIFIED REAL ESTATE AGENT.**—The term 'qualified real estate agent' means any individual who is a sales person if—

"(A) such individual is a licensed real estate agent,

"(B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

"(C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.

"(2) **DIRECT SELLER.**—The term 'direct seller' means any person if—

"(A) such person—

"(i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in

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the home or otherwise than in a permanent retail establishment, or

"(ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment.

"(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

"(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

"(3) COORDINATION WITH RETIREMENT PLANS FOR SELF-EMPLOYED.—This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals)."

(b) AMENDMENT OF SOCIAL SECURITY ACT.—Section 210 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"Treatment of Real Estate Agents and Direct Sellers

"(p) Notwithstanding any other provision of this title, the rules of section 3508 of the Internal Revenue Code of 1954 shall apply for purposes of this title."

(c) INDEFINITE EXTENSION OF PROVISIONS RELATING TO EMPLOYMENT STATUS FOR EMPLOYMENT TAXES.—

(1) TERMINATION OF CERTAIN EMPLOYMENT TAX LIABILITY.—

(A) Subparagraph (A) of section 530(a)(1) of the Revenue Act of 1978 (relating to termination of certain employment tax liability for periods before July 1, 1982) is amended by striking out "ending before July 1, 1982".

(B) Paragraph (3) of section 530(a) of such Act is amended by striking out "and before July 1, 1982."

(C) The subsection heading of subsection (a) of section 530 of such Act is amended by striking out "FOR PERIODS BEFORE JULY 1, 1982".

(2) PROHIBITION AGAINST REGULATIONS AND RULINGS ON EMPLOYMENT STATUS.—Subsection (b) of section 530 of such Act is amended—

(A) by striking out "July 1, 1982 (or, if earlier, ", and

(B) by striking out "taxes" and inserting in lieu thereof "taxes".

(3) CERTAIN REGULATIONS, ETC., PERMITTED.—Nothing in section 530 of the Revenue Act of 1978 shall be construed to prohibit the implementation of the amendments made by this section.

(d) CLERICAL AMENDMENT.—The table of sections for chapter 25 of such Code is amended by adding at the end thereof the following new item:

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to services performed after December 31, 1982.

(2) SUBSECTION (C).—The amendments made by subsection (c) shall take effect on July 1, 1982.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1 3 of 3

DATE 1-31-95

BILL NO. 14098

**DIRECT SELLING ASSOCIATION**

1666 K Street, NW, Suite 1010, Washington, DC 20006-2808
202/293-5760 • Fax 202/463-4569

January 31, 1995

The Honorable Thomas Keating
Chairman, Senate Labor Committee
Montana State Senate
Helena, MT 59620

Dear Chairman Keating:

I write on behalf of the Direct Selling Association (DSA) to ask your support of H.B. 98. Passage of this legislation would statutorily confirm the reality that direct sellers are independent businesspeople, and thus exempt from state workers' and unemployment compensation law. The legislation before your committee would benefit the direct selling industry, consumers who rely on direct selling, and the state as a whole.

By way of background, (DSA) is the national trade association representing over 150 companies which sell their products and services by personal presentation and demonstration, primarily in the home. Our membership, with 5.1 million direct sellers, includes some of the nation's most well-known commercial names. The home party and person-to-person sales methods used by our companies and their independent salesforces have become part and parcel of the American landscape.

The typical individual direct seller is a woman who operates her own business part-time from her home. Her financial goals are simple -- to earn enough extra income for gifts, tuition, or family vacation. The direct seller is the quintessential small business person; direct selling, the embodiment of a small business opportunity.

Direct sellers are a unique group of people. They work independent of the companies for which they sell products, they determine their own hours, set their own territory, and they bear the financial benefits and burdens of the business. Direct sellers do not earn salaries and only make money when they sell their products.

Direct sellers have always been found to be independent (and exempt) businesspeople at the federal level and in all states, including Montana. In 1982, Congress passed the Tax Equity and Fiscal Responsibility Act (TEFRA) and enacted section 3508 of the Internal Revenue Code. This law makes clear that for federal employment tax purposes, direct sellers are "non-employees". Presently, some 28 states have similar or identical specific statutory classifications for direct sellers.

The Honorable Thomas F. Keating
January 31, 1995
Page 2

In Montana, direct sellers are statutorily excluded from the workers' compensation section of the code, but not the wage and hour or unemployment sections of the code. House Bill 98 would not only recognize the realities of direct selling, it would also bring uniformity to the state code.

The Montana unemployment compensation section of the code uses what is commonly called an "ABC" test to determine who is and is not exempt from that law. Specifically, to be an exempt businessperson, an individual must be: (A) free from control or direction over the performance of his services; (B) such services are either outside the usual course of business for which such services are performed or that the services are performed outside the place of business of the putative employer; and (C) the individual is customarily engaged in an independent trade or business.

Up until recently, the direct selling industry has operated knowing that the tens of thousands of direct sellers in Montana satisfied the ABC test, were indeed independent and exempt businesspeople, and would not be misclassified as "employees". This feeling of comfort was based on the nature of the industry's operations in light of all other ABC test states (approximately 16 states). Up until recently, all ABC states (and for that matter, all other states) found direct sellers to be exempt from workers' and unemployment compensation law.

A recent decision by the Department of Labor found that at least one direct seller was an employee. DSA is concerned because this decision could signal a trend in the misinterpretation of the law and this alarming trend could be reversed by legislative relief. If not corrected, direct selling companies could be forced to contribute to the unemployment and workers' compensation funds, and could be liable for compliance with regulations normally associated with employers, but not independent businesspeople. Direct sellers are not employees, and direct selling companies are not employers. Direct sellers operate at low profit margins and calling a direct seller an employee and a direct selling company an employer would not only be incorrect, but it could impose a serious financial burden on the industry.

The unsettled state of the law leaves the rest of the direct selling industry, including the thousands of Montana direct sellers, in limbo. To prevent the erosion of direct selling in Montana, DSA is asking for your help.

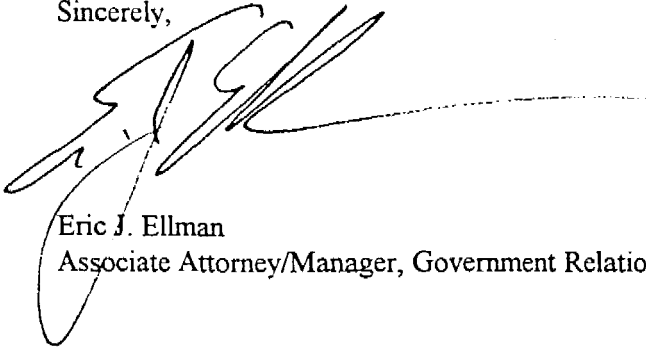
Adoption of the suggested amendment will not change the treatment of the vast majority of direct sellers, but will merely clarify the status of direct sellers, who have never been, on the whole, considered employees. Adoption of the amendment should not impose any additional financial burdens on the state or the unemployment compensation insurance fund. In fact, the clarification of the law could reduce the overall costs of the labor department in making determinations regarding direct sellers' status.

I ask you to support legislation that would follow the example set by the Congress and a majority of states and enact a definition in Montana's unemployment compensation law stating that direct sellers are exempt from the application of that law. This conformity would add certainty to the operations of honest, independent businesspeople and a vital industry.

The Honorable Thomas F. Keating
January 31, 1995
Page 3

I should note that real estate agents enjoy exempt status in the same section of federal law (TEFRA) as do direct sellers. Real estate agents, however, have a statutory definition as exempt in the Montana unemployment compensation section of the code. Adoption of the proposed amendment would codify the commercial realities of direct selling and provide parity with real estate agents and federal law as well.

Sincerely,



Eric J. Ellman
Associate Attorney/Manager, Government Relations

January 27, 1995

Senator Thomas F. Keating
Senate Labor Committee
Montana State Senate
State Capitol
Helena, Montana 59620

Dear Senator Keating:

On behalf of Mary Kay Cosmetics, Inc. and its sales force in Montana, let me express support for HB 98 which would clarify the status and exemption of direct sellers, such as Mary Kay Beauty Consultants, for workers' compensation, unemployment compensation, and wage hour purposes in the State of Montana.

The Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 classified direct sellers as non-employees for federal tax purposes. They are, therefore, exempt from unemployment compensation coverage.

Throughout the years, Mary Kay Cosmetics, Inc., in conjunction with the Direct Selling Association and other DSA member companies, has sought to make state laws consistent with this federal provision. Conformity with federal law is desirable for states, as the direct selling industry provides income earning opportunities for over four million Americans annually.

HB 98 is revenue neutral because no contributions are currently made to the unemployment insurance fund or workers' compensation plan on behalf of direct sellers.

Direct sellers are independent small business people and value their independence as much as the income they earn. In fact, they were an integral part of the grassroots effort included in the passage of TEFRA in 1982. They treasure their status as independent consultants, operating their own businesses, maintaining their own records, inventories and expenses, and bearing risk of loss.

Mary Kay Cosmetics, Inc.
6757 Shennandoah Parkway
Dallas, Texas 75247-8794

SENT BY MARY KAY COSMETICS : 1-31-95 10:07AM : MARY KAY CORPORATION : 406 449 0155 : # 2 / 3

Page 2

The amendments would benefit Montana's system by clarifying direct sellers' non-coverage and eliminate the need for costly administrative proceedings which might otherwise be necessary to determine employment status. It thus saves the system money and time by further defining who can file, benefiting those waiting to appropriately qualify for unemployment or workers' compensation. It does not change the substance of current labor laws.

The language of the suggested amendments is drawn very tightly so as to address only direct sellers such as Mary Kay Beauty Consultants, Amway distributors, Avon representatives, Kirby distributors, etc., which is our only purpose.

Most Mary Kay Beauty Consultants enter the career to supplement family income, many times as a second job, in these challenging economic times. Addition of this language will give Montana direct sellers additional security regarding their statutory classification as independent business people.

Mary Kay joins the Direct Selling Association, Kirby, and others in endorsing passage of these technical amendments.

Thank you for your time and consideration of this proposal.

Sincerely,

Anne Crews

Anne Crews
Manager
Corporate Affairs

cc: Eric Ellman, Direct Selling Association



Amway Corporation, 7575 Fulton Street East, Ada, Michigan 49355-0001
Legal Division

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2 (HB98) 6
DATE 1-31-95
BILL NO. HB 98

January 26, 1995

The Honorable Thomas F. Keating, Chairman
Senate Committee on Labor and Employment Relations
Capitol Station #413
Helena, MT 596

Subject: House Bill 98 / TEFRA Conformity Proposal

Dear Chairman Keating:

I understand House Bill 98 may soon come before the Senate Labor and Employment Relations Committee. On behalf of the many independent Montana Amway distributors, Amway would like to express its support for this legislation.

House Bill 98 would help both the state and the direct selling industry by codifying the status of direct sellers as independent contractors under the Unemployment Compensation and Wage & Hour laws. These direct sellers, who include persons such as independent Amway distributors, Avon ladies and Mary Kay beauty consultants, are treated as non-employees under Montana common law. Direct sellers are already specifically exempted from the state Workers' Compensation Act.

Amway proposes to amend the Unemployment Compensation and Wage & Hour laws by adopting the language enacted by Congress in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). This bill was enacted after intensive study and analysis by Congress and the Internal Revenue Service, and statutorily declares direct sellers to be non-employees for federal tax purposes.

To date, at least 18 states have already enacted the TEFRA conformity language including: Alabama, Arizona, California, Florida, Illinois, Louisiana, Maryland, Minnesota, Missouri, Nevada, New Jersey, Oklahoma, Oregon, Tennessee, Texas, Virginia, Washington and Wisconsin. The federal language upon which all these statutes is based is tightly drawn to prevent any persons other than legitimate direct sellers from falling beneath its coverage.

The proposed amendment would simply codify the status of direct sellers as independent contractors, as currently found at common law. Direct sellers such as Amway distributors, Avon ladies and Mary Kay beauty consultants - as well as others representing companies such as Tupperware, Fuller Brush, Encyclopedias Britannica and World Book - are not employees of the companies whose products they sell but are instead independent business people. They decide for themselves the hours during which they wish to pursue their opportunity and the amount of effort they wish to expend. They determine the prices at which they sell their products, are responsible for the business expenses they incur, keep their own records and accounts, bear the risk of loss, and keep for themselves the fruits of their enterprise. They are truly independent business persons.

January 26, 1995
Page 2

The status of direct sellers as non-employees is therefore not disputed. Nonetheless, Amway Corporation and the direct selling industry wish to have the Montana Unemployment Compensation and Wage & Hour laws amended to statutorily clarify that non-employee status and make these laws consistent with the Montana Workers' Compensation law. Direct sellers such as Amway distributors are not like Amway employees, and would not participate in the unemployment compensation process because of this accepted status. However, the mere task of administering occasional meritless UC claims can be expensive for the state as well as the direct selling companies involved.

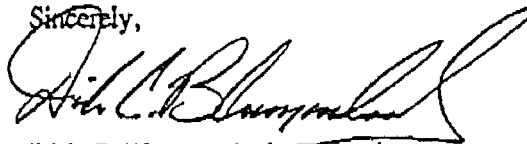
Usually an evidentiary hearing is required to resolve such claims, involving the expense of attorneys and administrative personnel. Although the common law is consistent in its treatment of direct sellers as being ineligible for unemployment compensation benefits, the standards set out in the proposed direct seller exemption are concise, precise and easy to prove. The proposal is revenue neutral and may even result in a savings of administrative expenses to the state. Future savings can be predicted attributable to an anticipated reduction in the number of meritless UC claims, which benefits those waiting to appropriately qualify.

Further, there is no question that to ensure consistency the provisions of the Wage and Hour law which relate to employer-employee relationships should also specifically exempt direct sellers as non-employees. House Bill 98 does this.

HB 98's proposed test recognizes the Department of Labor and Industry's historical role in distinguishing this class of independent contractors from true employees. This test would make for an easier administrative determination of the facts and circumstances surrounding misfiled claims. Therefore, Amway urges your support of House Bill 98.

If I may be of further assistance in this matter, please call me at (616) 676-7010 or Brad Griffin of the Montana Retail Association, of which Amway is a member. Thank you for your kind attention.

Sincerely,



Dirk C. Bloemendaal, Counsel
Corporate Government Affairs

CC: Members of Senate Labor and Employment Relations Committee
Brad Griffin, Montana Retail Association
Eric Ellman, Direct Selling Association

Shaklee Corporation

Shaklee Terraces 444 Market Street
San Francisco, CA 94111
Telephone 415-954-2018
FAX 415-954-2155

Evelyn Jarvis-Ferris

Vice-President
Government Relations

January 26, 1995

The Honorable Thomas F. Keating
Chairman, Senate Labor and Employment Relations Committee
Montana State Senate
State Capitol
Helena, MT 59620

Dear Senator Keating:

I understand that the Senate Labor and Employment Relations Committee will be considering H.B. 98, relating to unemployment and workers compensation at a hearing scheduled for January 31. This bill was unanimously passed by the House on January 12. Shaklee supports this legislation which will ensure that direct selling distributors will retain their independent businessperson status in Montana.

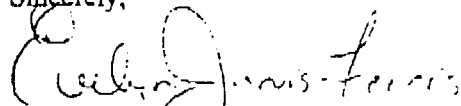
Shaklee, as you may know, is a direct selling company that distributes its nutritional, household and personal care products through independent businesspersons who work primarily out of their homes. The majority of our Distributors are women who sell Shaklee products on a part-time basis to supplement the family income.

Direct sellers are specifically defined as independent businesspersons in federal law and in many states by an exemption similar to that included in H.B. 98. This exemption clearly delineates what direct sellers are and what they are not and assures that they are able to operate their small businesses independently.

Many people start a Shaklee business precisely because they want to work for themselves. With a Shaklee business, people work independently making their own business decisions, including deciding what the size of their business will be and how much time they will devote to it. Some make it a full-time business while most others make it a part-time business. Some are in business for many years while others operate a business for only a short time. Given the nature and variety of Shaklee business people, it is essential that they continue to be classified as independent businesspersons. H.B. 98 will accomplish this and I urge your support of it.

Please let me know if I can be of further assistance.

Sincerely,



Evelyn Jarvis-Ferris
Vice President, Government Relations

Richard Herthneck
Proponent HB 98

Burney & Herthneck Co., L.P.A.

ATTORNEYS AND COUNSELORS AT LAW

160 PLAZA WEST BUILDING
20220 CENTER RIDGE ROAD
ROCKY RIVER, OHIO 44116
FACSIMILE (216) 356-6090

(216) 331-4660

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2 182
DATE 1-31-95
BILL NO. HB 98

JON R. BURNEY
RICHARD E. HERTHNECK
MICHAEL P. MEEHAN

January 27, 1995

Senator Thomas F. Keating
Chairman Senate Labor and
Employment Relations Committee
Helena, Montana 59620

Re: Direct Sellers

Dear Senator Keating:

The Kirby Company, located in Cleveland, Ohio, manufactures Kirby cleaning systems primarily used in the home.

Kirby has manufactured Kirby cleaning systems since the early 1900's and has written agreements with approximately 700 independent distributors of these cleaning systems throughout the United States.

Kirby cleaning systems are wholesaled to these distributors who, in turn, retail them to direct selling dealers, who have independent agreements with the distributors.

Dealers then perform in-home demonstrations at a consumer end-user's home.

Any such sale to a consumer end-user is at prices established by the dealer and the dealer's profit is measured by the difference he or she pays the distributor for the cleaning system and his or her sale to the consumer end-user.

Kirby cleaning systems have always been sold in this manner since, amongst other things, the Kirby cleaning system is a multi-faceted cleaner which needs explanation in order to understand its many functions and purposes.

In addition to a dealer establishing his or her own retail selling price to the consumer end-user, dealers are free from control or direction from the distributor concerning their sales activities with the consumer and such services are provided by the dealer outside of the distributor's establishment.

Senator Thomas F. Keating
Chairman Senate Labor and
Employment Relations Committee
January 27, 1995
Page 2.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 3 2 of 2

DATE 1-31-95

BILL NO. HB 98

More specifically, a dealer establishes his or her own territory; develops their own leads; provides his or her own transportation; receives no perquisites from the distributor; is free to hire or otherwise utilize assistance; is free to engage in other activities, including representing a competitor's lines of products or services; obtains his or her permits as may be required for the demonstration and sale of Kirby cleaning systems to the consumer end-user; is responsible for his or her taxes; receives a form 1099 for federal tax purposes; and generally performs services until that time that the distributor and dealer agree that the services are no longer needed or necessary.

A dealer who is a successful direct seller normally applies those skills to the direct sale of other goods and services for other companies and/or continues in his or her efforts as a direct sales person.

Activities of a dealer comply with Section 3508 of the Internal Revenue Code in that dealers are not deemed to be employees but are direct sellers.

House Bill 98 proposes to include the definition of "direct seller", as defined by the referenced Internal Revenue Code Section as someone who is customarily engaged in an independently established trade, occupation, profession or business as a legislative exemption since such dealers truly are independent in their direct sale capacities.

We believe that Montana House Bill 98 will clarify the status of direct sellers and ask for your support of this Bill.

Sincerely,



Richard E. Herthneck

REH:lm

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1 of 3

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1013

DATE Jan 31, 1995

BILL NO.

DATE January 31, 1995

SENATE COMMITTEE ON Labor + Employment Relations

BILLS BEING HEARD TODAY: SB 155 HB 98 SB 110

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
DAVE BROWN	Kirby	HB-98	X	
DAVE ROTT	KIRBY	HB 98	X	
BOB Gustafson	Kirby	HB 98	X	
Dan Fouts	Kirby	HB 98	X	
Mike Davis	Kirby	H. B. 98	X	
CARL HAGER		SB 110		
BLAIN Schaff	KIRBY	HB 98	X	
Richard HERTHNECK	Kirby	HB 98	✓	
Eric J. Ellman	DIRECT SELLING ASSN	HB 98	X	
Jim Myn	Western STATE			
Marjuline Lemark	Am. Ins. Assoc	SB 110 SB 155		X
Jim John	Express Parcel	SB 151		
Brad Griffin	MT Retail Assoc	HB 98	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

2 of 3
 SENATE LABOR & EMPLOYMENT
 EXHIBIT NO. 2 of 3
 DATE Jan 31, 1995
 BILL NO.

DATE January 31, 1995
 SENATE COMMITTEE ON Labor & Employment Relations
 BILLS BEING HEARD TODAY: SB 155 HB 98 SB 110

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Jim Tutwiler	MT. Chamber	SB 110		✓
George Wood	MT. Self Interest	SB 110		✓
CHUCK HUNTER	DEPT. OF LABOR	SB 110		✓
Russell B Hill	MT Trial Lawyers, #1 N. Last Chance Gulch, Helena	SB 110		✓
Nancy Butler	State Fund, P.O. Box 4759 Helena mt. 59601	SB 110		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY